

Remarks

Claims 1, 3, 5 and 19 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,945,608 to Hutchinson. In light of the amendments above, applicant respectfully submit that these claims are no longer anticipated by Hutchinson.

The above claims has been amended to reflect that the flow responsive element generates a torque level which is used by the claimed apparatus to determine a fluid flow level. Hutchinson discloses an apparatus which bends in response to a fluid flow and this bending brings a magnetic element closer or farther to a Hall Effect sensor, thus increasing or decreasing the strength of the magnetic field relative to the sensor. In one embodiment, the present invention utilizes a flow responsive element to create torque which rotates a magnet relative to their previous position. The rotation of the magnets results in a change of both strength and direction of the magnetic field relative to the sensor. It is believed that the ability to change both direction and strength of the magnetic fields enables a significantly more accurate reading of fluid flow and the direction of fluid flow.

Claims 2 and 20 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,945,608 to Hutchinson. The applicant respectfully submits that, in light of the amendments to claims 1 and 19, from which claims 2 and 20 respectively depends, the above claims are no longer made obvious by Hutchinson. Because of the amendments to its respective independent claims, claims 2 and 20 also require a flow responsive element that generates a torque level which is used by the claimed apparatus to determine a fluid flow level. This feature is neither disclosed nor taught in Hutchinson.

Claims 21 and 22 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,945,608 to Hutchinson in view of U.S. Patent No. 5,259,373 to Gruenke et al. The applicant respectfully disagrees and requests reconsideration in light of the following arguments.

The applicant respectfully submits that there is no disclosure, teaching or motivation in Hutchinson or Gruenke which would allow the two references to be combined. Hutchinson discloses a flow meter which is intended for use in pipes and ducts (col. 2, line 64). There is no disclosure, teaching, or motivation in Hutchinson which would lead one skilled in the art to believe that the disclosed flow meter could be utilized as part of a mask assembly.

There is also no teaching, disclosure, or motivation in Gruenke (in Col. 10, lines 63-68) which would lead one skilled in the art to combine the two references. Gruenke utilizes a pneumotach in order to determine flow in the patient conduit. Generally, pneumotachs are specifically adapted for medical use in respiratory testing, and they also have footprints which would create minimal disturbance in the patient airway. There is no teaching, disclosure, or motivation in Gruenke to utilize a flow meter such as the one disclosed in Hutchinson. Furthermore, it is also believed that the footprint of Hutchinson's flow meter would create a significant disturbance in the patient airway.

Consequently, we respectfully submit that claims 21 and 22 are not made obvious by Hutchinson in light of Gruenke.

Claim 4 was objected to as being ambiguous. In light of the amendments made thereto, and to Claim 1 (from which it depends), it is believed that claim 4 is no longer objectionable.

Claim 23 was objected to for being dependent upon a rejected base claim, but was deemed allowable if rewritten in independent form. As such, Claim 23 was amended to be in independent form and includes all of the limitations of the base claim and any intervening claims.

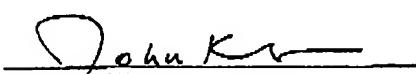
Claims 24-26 were allowed.

Conclusion

Applicant respectfully submits that, as amended, the subject application is in condition for allowance, and allowance thereof is kindly requested. Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the claims to proceed to allowance, the Examiner is invited to contact the undersigned attorney at the Examiner's earliest convenience.

Respectfully submitted,
Compumedics Limited,
by its Attorneys

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8:

I hereby certify that this paper and any papers referred to herein are being sent via facsimile to Examiner Keith D. Hendricks, facsimile number 703-872-9306, on January 27, 2005.

John F. Klos: 